IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.395 OF 1988

Employees State Insurance Corporation,
Bombay ....Appellant

V/s.

Express Industries, Bombay ....Respondent

Mr.H.V. Mehta for Appellant.
None for Respondent.

CORAM : V.M. KANADE, J.

DATED : 28th AUGUST, 2007.

P.C:-

1 Heard learned counsel for Appellant. None appears on behalf of the Respondent though they are served.

2. Appellant/Employees State Insurance Corporation has filed this First Appeal challenging the judgment and order passed by the Judge, Employees' State Insurance Court, Bombay inter alia on the ground that the lower court has erred in not granting statutory interest which was payable by the Respondent-Company herein under regulation 31-A of ESI(General) Regulations, 1950.

3. Brief facts which are relevant for the purpose of this First Appeal are as under:-

The Respondent-Company filed an application in the Employees' State Insurance Court, Bombay, seeking a declaration that the Respondent/Express Industries and other two units could not be clubbed together as one factory within the meaning of Section 2(12) of the E.S.I. Act, 1948. Employees' State Insurance Court partly allowed the said application. It held that the Respondent-Company and two units would be covered together as one factory under Section 2(12) of the E.S.I. Act, 1948 and would be liable to pay exact amount of contributions of E.C. And E.S.C. for the period from 1st April, 1962 till 31st March, 1972. However, it further held that in view of inordinate delay on the part of the E.S.I. Authorities, Respondent-Company was not liable to pay any interest on those amounts. Being aggrieved by the aforesaid findings recorded by the Trial Court, the Appellant-Corporation has filed this First Appeal.

4. Mr.Mehta, the learned counsel for the Appellant-Corporation

submitted that the statutory authority did not have any discretion in holding that Respondent-Company was not liable to pay interest in view of expressed provisions under Regulation 31-A of ESI(General) Regulations, 1950. He submitted that the Trial Court having held that the Respondent/Express Industries was liable to pay contributions, ought to have passed a consequential order directing the Respondent-Company to pay statutory interest @ 6% per annum. In support of his submissions, he relied on the judgment of **Panjab and Haryana High Court in the case of Employees' State Insurance Corporation, Chandigarh, Appellant V. The Markfed Vanaspati & Allied Industries, Ludhiana, Respondent reported in 1983 LAB.I.C. 410**. He also relied on the judgment of Karnataka High Court in the case of **Joint Director of E.S.I. Corporation, Hubli and Another V/s. Riddhi Siddhi & Chemicals Ltd**. and lastly another judgment of the **Karnakata High Court in the case of Regional Director, Employees State Insurance Corporation V/s. Manjog Home and Organisation**. None appears for the Respondent though they are served.

5. At the relevant time, Regulation 31-A read as under:-

> An employer who fails to pay contributions within the periods specified in Regulation 31 or within such time as may be specified by the Central Government under S.73-A of the Act for the purpose of that section, as the case may be, shall be liable to pay also interest at the rate of 6 per cent per annum in respect of each day of default or delay in payment of contributions."

The Trial Court held that the Respondent-Company and two units were clubbing together after lapse of 10 years though insurance Inspector had visited the Respondent-Company's units and therefore, it held that the Respondent-Company was not liable to pay any interest. Perusal of aforesaid Regulation 31-A clearly discloses that no discretion is vested in the authority to waive the payment of interest once it is held that the Respondent-Company is liable to pay contributions.

6. The Trial Court, therefore, in my view, clearly erred in not accepting claim of the Appellant-Corporation towards interest which was payable by the Respondent-Company. Same view is taken by the **Panjab and Haryana High Court in the case of Employees' State**

Insurance Corporation(Supra) and by the Karnataka High Court in the cases of **Joint Director of E.S.I. Corporation**(supra) and **Regional Director, Employees State Insurance Corporation**(Supra). Judgment and order of the Trial Court, therefore, to the extent that it does not grant interest in favour of Appellant-Corporation is set aside. First Appeal is allowed. Impugned order is set aside to that extent. Respondent/Company is directed to pay interest as prescribed under the Act. First Appeal is allowed in above terms and is disposed of accordingly.

V.M. KANADE, J.